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13 **UNITED STATES DISTRICT COURT**

14 **DISTRICT OF NEVADA**

15 WMCV PHASE 3, LLC, a Delaware limited
16 liability company,

17 **CASE NO. 2:10-cv-00661-GMN-RJJ**

18 Plaintiff,

19 vs.

20 SHUSHOK & MCCOY, INC., a Texas
21 corporation; MATTHEW J. TRAVIS, an
22 individual; MATT TURNER, an individual;
23 RICHARD BIRDWELL, an individual;
24 GLOBAL ACCENTS, INC., a California
25 corporation; COUTURE INTERNATIONAL
26 INC., a Quebec corporation; DOES I through
27 X, inclusive; ROE ENTITIES I through X,
28 inclusive,

**COUTURE INTERNATIONAL INC.'S
PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

Defendants.

29
30 The trial of this matter came before the above-entitled Court on November 20, 2012.
31 Plaintiff/Counterdefendant, WMCV PHASE 3, LLC ("Phase 3") appeared and was represented
32 by its attorney, Jason Gerber, Esq. of the law firm of Marquis Aurbach & Coffing.
33 Defendant/Counterclaimant/Cross-Claimant GLOBAL ACCENTS, INC. ("Global") appeared
34 and was represented by its attorney Michael B. Lee, Esq. Defendant/Counterclaimant/Cross-
35 Claimant COUTURE INTERNATIONAL INC. ("Couture") appeared and was represented by
36 its counsel William R. Urga, Esq. and David J. Malley, Esq. of the law firm of Jolley Urga
37 Wirth Woodbury & Standish. The Court having received evidence in the form of documents

1 and the testimony of witnesses, and having heard the arguments of counsel, now enters its
2 Findings of Fact and Conclusions of Law as follows:

3 **I.**

4 **FINDINGS OF FACT**

5 1. Couture is engaged in the business of manufacturing and selling furniture and
6 furnishings for residents and businesses. Phase 3 is the owner of the real property and
7 improvements located at 455 S. Grand Central Parkway, Las Vegas, Nevada commonly known
8 as the World Market Center.

9 2. The World Market Center is a large complex where furniture manufacturers are
10 able to display their products on a yearly basis at two (2) semi-annual furniture conventions.

11 3. On May 21, 2007, Couture, as tenant, entered into a lease agreement (the
12 "Couture Lease") with Phase 3 as landlord for Space C-1164, consisting of approximately
13 3,555 sq. ft. to commence on July 1, 2008.

14 4. Disputes between Phase 3 and Couture arose over the amount of rent being paid
15 and rent discounts being provided by Phase 3 to other tenants in the property and on or about
16 August 1, 2008, Couture failed to pay rent.

17 5. Phase 3 evicted Couture on or about December 31, 2008.

18 6. In or about 2007, Phase 3 hired Defendant Shushok & McCoy, Inc. ("Shushok")
19 as a commercial collection agent for the purpose of recovering past due amounts from tenants of
20 the World Market Center.

21 7. Shushok had no actual authority to enter into agreements with tenants on behalf
22 of Phase 3; however, Phase 3 was aware of the fact that Shushok was negotiating work out
23 terms and releases from liability. Phase 3 was aware of the negotiations engaged in by Shushok
24 by tenants for settlement amounts and release agreements. Sometime prior to July 2009, Phase
25 3 assigned the Couture Lease to Shushok for collection.

26 8. On July 28, 2009, Andre Lafleur, on behalf of Couture, signed a Lease
27 Termination and Release Agreement ("Couture Release") which (a) Couture received from
28

1 Shushok; (b) Defendant Richard Birdwell, a collection agent for Shushok, signed on July 8,
 2 2009 as counsel for World Market Center; and (c) released Couture from its liability under the
 3 Couture Lease in exchange for \$20,000.00.

4 9. The Couture Release is dated as of May 21, 2007, the same date Phase 3 and
 5 Couture entered into the Couture Lease. Couture paid \$20,000.00 directly to Shushok after
 6 Couture executed the Couture Release. At the time that the Couture Release was executed,
 7 Couture's outstanding debt to Phase 3 was approximately \$41,000.

8 10. On or about June 25, 2009, Phase 3 terminated Shushok's authority to conduct
 9 commercial collections and recover past due rent from tenants of the World Market Center.
 10 Couture did not learn from Phase 3 that Shushok had been terminated until after Couture had
 11 executed and funded the Couture Release with Shushok.

12 CONCLUSIONS OF LAW

13 1. A principal is bound by the acts of its agent while acting the course of his or her
 14 employment, and a principal is liable for those acts within the scope of the agent's authority.
 15 *Nevada Nat'l Bank v. Gold Star Meat Co.*, 89 Nev. 427, 429, 514 P.2d 651, 653 (1973).

16 2. "Apparent authority is 'that authority which a principal holds his agent out as
 17 possessing or permits him to exercise or to represent himself as possessing, under such
 18 circumstances as to estop the principal from denying its existence.'" *Dixon v. Thatcher*, 103
 19 Nev. 417, 742 P.2d 1029, 1031 (1987). In order to prove apparent authority, a party must prove
 20 that it (1) subjectively believed that the agent had authority to act for the principal and that (2)
 21 the subjective belief in the agent's authority was objectively reasonable. *Great American Ins.*
 22 *Co. v. General Builders, Inc.*, 113 Nev. 346, 353, 934 P.2d 257, 261 (1997).

23 3. While Shushok may not have had actual authority to collect any obligation on
 24 behalf of Phase 3 after June 2009, Shushok did have apparent authority since neither Phase 3
 25 nor Shushok ever communicated to Couture that Shushok's authority to act on behalf of Phase 3
 26 had been terminated.

27 4. Further, "[a] principal [] may be bound by the acts of its agent as to third parties

1 who have no reason to know of the agent's improper conduct. This is so even when the agent
2 acts for his own motives and without benefit to his principal." *Homes Savings Ass'n v. General*
3 *Electric Credit Corp.*, 101 Nev. 595, 600, 708 P.2d 280, 283 (1985). While Phase 3 claims that
4 Shushok never had any actual authority to negotiate any agreements on its behalf, that limitation
5 on authority was never communicated to Couture. In fact, Phase 3 was aware of the fact that
6 Shushok was negotiating work out terms and releases from liability for other tenants.

7 5. Here, Phase 3 retained Shushok to act as its commercial collection agent
8 for the purposes of recovering past due debt from Couture. The scope of this authority
9 included negotiating lease termination agreements and other issues beyond the scope of a
10 normal collections agent. As such, Shushok was cloaked in apparent authority to
11 negotiate release agreements on behalf of Phase 3.

12 6. Based on the forgoing Findings of Fact and Conclusions of law, the Court finds
13 that Phase 3 take nothing on its claims for relief against Couture.

14 Dated this 8th day of November, 2012.

JOLLEY URGA WIRTH WOODBURY & STANDISH

By:

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